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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/810,207	BARSHEFSKY ET AL.
	Examiner	Art Unit	
	Phuong-Thao Cao	2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>25 July 2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1 and 3-13</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1 and 3-13</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in response to Amendment/RCE filed on 07/25/2008 and entered with an

RCE.

2.   Claims 1, 4, 5 and 7-13 have been amended, and claims 2 and 14-17 were previously

cancelled. Currently, claims 1 and 3-13 are pending.

Continued Examination Under 37 CFR 1.114

3.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on 06/24/2008 and 07/25/2008 has been entered.

Response to Arguments

4.   Applicant's arguments with respect to claims 1 and 3-13 have been considered but are

moot in view of the new ground(s) of rejection.

<div align="center">***Claim Objections***</div>

5.   Claims 1, 5, 8 and 13 are objected to because of the following informalities:

Regarding claim 1, "***said the build area***" in line 10 should be corrected as either "*said build area*" or "***the build area***". For "said comparison defines..." paragraph (lines 22-25), its components (e.g., "files in current release but not in new build area", "deleted file names not in new build area and not in current release", etc.) should be connection by comma (,) rather than semi-colon (;) as recited. The term "***into***" in the phrase "to create the new release of the software ***into*** the release area" (line 28) should be corrected to "***in***" to clarify the claimed limitation.

Regarding claim 5, the newly added semi-colon (;) is not appropriate since "further creates a directory structure" is an additional function associated with "said install element" besides "copies specified files" as recited.

Regarding claim 8, "A method" (line 1) should be replaced by "A computer implemented method" to clarify the recited method as a process implemented on computer; and "source subjects" (line 23) should be "source objects".

Regarding claim 13, "A method" (line 1) should be replaced by "A computer implemented method" to clarify the recited method as a process implemented on computer; the newly added "and" in line 5 is not appropriate since it is "said build area" which stores modified

software for creating a genetic software product as recited; the phrase "said inventory file

compares all software…" (line 16) should be "said inventory file compares *information*

regarding all software…".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making
> and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it
> pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode
> contemplated by the inventor of carrying out his invention.

7.   Claim 1 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with

the written description requirement. The claim(s) contains subject matter which was not

described in the specification in such a way as to reasonably convey to one skilled in the relevant

art that the inventor(s), at the time the application was filed, had possession of the claimed

invention.

Regarding claim 1, the amended limitation "said software release information manager is

configured to compare the build information in the inventory file with information defining the

entirety of the new release of the software in the release area" contains new subject matter.

According to the specification, the release area defines a new release only after the modified

software is copied from the build area to the release area and only after the comparison to

identify the differences between software in the build area and software in the release area. At

the comparison, the release area defines the current release and the build area defines the new

release.

Similarly, claim 9 recited "storing received release information defining

entirety of a new software release in a second database". Before the modified

software is copied from the build area into the release area, the received release

information defines the current release instead of a new release as recited.

8.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

9.   Claims 1, 7-9 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Regarding claim 1, the limitation "said inventory file is configured under control of said

scan element to compare all software comprising said build area" raises question of how to

compare all software that comprises said build area. In addition, the specification discloses the

comparing between software/information in build area and software/information in release area

but not the comparing all software in just build area as recited.

Claim 1 recites the limitation "the build information" in line 19. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said comparison" in line 22. There is insufficient antecedent basis for this limitation in the claim. It is unclear if "said comparison" refers to the comparison as recited in line 17 or the comparison as recited in line 19.

Claim 1 recites the limitation "new build area" as recited in lines 22, 23 and 24 which raises the question whether "new build area" refers to the build area as recited or "new build area" refers to an area separate from the build area as recited in the claim.

Regarding claim 1, limitation "deleted file names not in new build area and not in current release" may be incorrect. When a file is newly deleted in the build area, its file name is not in the build area but should still exist in the release area.

Regarding claim 7, language "may include" (line 2) raises question of whether the identified differences include one of more elements as recited.

Claim 8 recites the limitation "the software of a current release" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the new build area" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 8, language "new" as recited in "new build information" (line 5) and "new information" (line 9) is indefinite. It raises question of how to identify information in the build area as new or old information.

Claim 8 recites the limitation "new build area" as recited in lines 19, 20 and 21 which raises the question whether "new build area" refers to the build area as recited or "new build area" refers to an area separate from the build area as previously recited in the claim.

Claim 8 recites the limitation "the entirety of a new generic software release information" in line 25 and the limitation "the build software information" in line 26. There is insufficient antecedent basis for these limitations in the claim.

Claim 9 recites the limitation "said release database" in line 4, the limitation "the build area software" in line 5, the limitation "said new release area software" in line 6 and 7, the limitation "the build software information" in line 6 and the limitation "the release software information" in line 7. There is insufficient antecedent basis for these limitations in the claim.

Claim 13 recites the limitation "said release area" in line 15. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "new build area" as recited in lines 18, 19 and 20 which raises the question whether "new build area" refers to the build area as recited or "new build area" refers to an area separate from the build area as previously recited in the claim.

Claim 13 recites the limitation "the release information" in line 25. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

10.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11.   Claims 1 and 3-7 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claim 1, this claim is for a system. However, all of the elements claimed could be reasonably interpreted in light of the disclosure by an ordinary artisan as being software alone, and thus is directed to software *per se*, which is non-statutory.

In order for such a software claim to be statutory, it must be claimed in combination with an appropriate medium and/or hardware to establish a statutory category of invention and enable any functionality to be realized.

Claims 3-7 are rejected as incorporating the deficiencies of rejected claim 1 upon which

they depend.

Claim Rejections - 35 USC § 102

12.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed
> in the United States before the invention by the applicant for patent or (2) a patent granted on an application for
> patent by another filed in the United States before the invention by the applicant for patent, except that an
> international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this
> subsection of an application filed in the United States only if the international application designated the United
> States and was published under Article 21(2) of such treaty in the English language.

13.   Claims 1, 3-8 and 10-13 (effective filing date 03/26/2004) are rejected under 35

U.S.C. 102(e) as being anticipated by Custodio (US Publication No 2003/0182652, effective

filing date 12/21/2001).

As to claim 1, Custodio teaches:

"A system for generating a new release of generic software" (see Custodio, Abstract and

Fig. 3) comprising:

"a release area comprising a release database for storing software defining a current

release of a software product" (see Custodio, [0024] and [0029] wherein production environment

containing a release of software can be interpreted as a release area);

"a build area for storing files and directories associated with modifications of the current release; said build area creates derived objects and copies files necessary to release said software from said build area to said release area" (see Custodio, [0024], [0029] and [0038] wherein development environment allowing building of software components and modifying a particular release is interpreted as building area; see [0038] and [0029] for using manifest to determine modified files in a particular release and select correct code to deploy to an environment to define a new release);

"a software release information manager coupled to the release area and coupled to the build area and configured to identify differences between software in said release area and the software in said the build area; said software release information manager is configured to copy the software required for entry into said release area to define a new release" (see Custodio, [0029], [0033] for managing changes in environments, identifying difference between releases (i.e., software) in different environments and deploying code to an environment to define a new release);

"a scan element configured to determine information regarding the software stored in the build area" (see Custodio, [0036] for inventory software running on each environment);

"said scan element scan said build area and generates an inventory file that categorizes the software that comprises said build area" (see Custodio, [0036] and [0045] wherein database as disclosed is interpreted as inventory file as recited; also see [0079] wherein the inventory software is interpreted as scan element);

"said inventory file is configured under control of scan element to compare all software comprising said build area" (Custodio, [0089] for using database to verify software in a specific environment); and

"said software release information manager is configured to compare the build information in the inventory file with information defining the entirety of the new release of the software in the release area" (see Custodio, [0033], [0042] and [0045] for using information in the database to determine the difference between software (i.e., release) in different environment) wherein inventory manager can be interpreted as software release information manager);

"said comparison defines: files in current release but not in new build area; deleted file names not in new build area and not in a current release; new file names in new build area and not in current release; differences in parameters of both newly deleted files and newly added files, file differences, file user permission" (see Custodio, [0089]-[0092]); and

"said software release information manager and an install module are configured to install modified software into the release area defining the entirety of a new genetic software release" (see Custodio, [0029] for deploying code to an environment to define a new release).

As to claim 3, this claim is rejected based on arguments given above for rejected claim 1 and is similarly rejected including the following:

Custodio teaches:

"a release area coupled to the scan element and said inventory file for storing the information regarding files and directories located in the build area" (see Custodio, Fig. 1 and 3, [0036] and [0045] for a system including environments (i.e., development (build) or production (release)), a database (inventory file) and inventory software (scan element)).

As to claim 4, this claim is rejected based on arguments given above for rejected claim 1 and is similarly rejected including the following:

Custodio teaches:

"a verify element coupled to said inventory file and configured to compare information representing software in the release storage area with information representing software in the build area to identify differences between the compared information" (see Custodio, [0033] for checking the database to verify the differences between releases);

"said verify element allows a user to verify a new generic software release to compare different generic releases of the same product using information in said inventory file to verify the software in said release area" (see Custodio, [0042]-[0043] and [0084]).

As to claim 5, this claim is rejected based on arguments given above for rejected claim 1 and is similarly rejected including the following:

Custodio teaches:

"an install element coupled to said inventory file element to copy files and directories from the build area to the release area" (see Custodio, [0024] for the relationship between development environment, testing environment and production environment as different stages

in the development of single integrated system, which implies that code (i.e., files and

directories) in development environment must be copied (either directly or indirectly) to testing

environment for testing and to production environment for executing; also see [0045]).

As to claim 6, this claim is rejected based on arguments given above for rejected claim 1

and is similarly rejected including the following:

Custodio teaches:

"wherein the build area is adapted to be used by a developer to modify or create files

and/or directories for the software product" (see Custodio, [0024] and [0029] for development

environment).

As to claim 7, this claim is rejected based on arguments given above for rejected claim 4

and is similarly rejected including the following:

Custodio teaches:

"wherein the identified differences may include one or more of: file existence, file names,

file ownership information, file access control information, file contents directory existence,

directory names, directory ownership information, and directory access control information" (see

Custodio, [0089]-[0090]).

As to claim 8, Custodio teaches:

"A method for software release management of a generic software product" (see Custodio, Abstract), the method comprising the steps of:

"identifying a build area for storing development files in a hierarchically structured development directory for the software of a current release" (see Custodio, [0024] for development environment);

"receiving new build information regarding the development software configured to be stored in the new build area to define the entirety of a new software release" (see Custodio, [0029] for tracking changes to software in an environment);

"identifying a release area configured to store release software in a hierarchically structured release directory" (see Custodio, [0024] for production environment);

"receiving new information regarding the release software presently in the release area" (see Custodio, [0029] for tracking changes to software in an environment);

"a scan element configured to determine information regarding the software stored in the build area" (see Custodio, [0036] for inventory software running on each environment);

"scanning said build area and generating an inventory file that categorizes the software that comprises said build area" (see Custodio, [0036] and [0045] wherein the database as disclosed is interpreted as inventory file as recited; also see [0079] wherein the inventory software is interpreted as scan element);

"said inventory file configured under control of scan element to categorize all software presently comprising said build area" (Custodio, [0045] and [0089] for using database to verify software in a specific environment);

"said inventory file is configured to compare the build information in the inventory file with information regarding the current release of software in the release area" (Custodio, [0033] for using database to identify the differences between software releases)

"said comparison defines: files in current release but not in new build area; deleted file names not in new build area and not in a current release; new file names in new build area and not in current release; differences in parameters of both newly deleted files and newly added files, file differences, file user permission" (see Custodio, [0089]-[0092]);

"said build area creates derived objects from source objects and copies files necessary to release said software from said build area to said release area" (see Custodio, [0024], [0029] and [0038] wherein development environment allowing building of software components and modifying a particular release is interpreted as building area; see [0038] and [0029] for using manifest to determine modified files in a particular release and select correct code to deploy to an environment to define a new release);

"reporting to a user the differences between the entirety of a new genetic software release information and the build software information wherein the differences include one or more of: file existence, file names, file ownership information, file access control information, file contents directory existence, directory names, directory ownership information, and directory access control information" (see Custodio,] [0043], [0084] and [0089]-[0090]).

As to claim 10, this claim is rejected based on arguments given above for rejected claim 8 and is similarly rejected including the following:

Custodio teaches:

"installing a copy of the release files and directory in a destination storage area to install a current release of software product" (see Custodio, [0029] for deploying code to an environment to define a new release).

As to claim 11, this claim is rejected based on arguments given above for rejected claim 8 and is similarly rejected including the following:

Custodio teaches:

"copying build files from the build area via said inventory file to the release storage area to generate a new release" (see Custodio, [0024] for the relationship between development environment, testing environment and production environment as different stages in the development of single integrated system, which implies that code (i.e., files and directories) in development environment must be copied (either directly or indirectly) to testing environment for testing and to production environment for executing; also see [0045]).

As to claim 12, this claim is rejected based on arguments given above for rejected claim 11 and is similarly rejected including the following:

Custodio teaches:

"installing a copy of the release software in a destination storage area to install a current release of software product" (see Custodio, [0073] for installing software in disparate servers).

As to claim 13, Custodio teaches:

"A method for software release management" (see Custodio, Abstract and Fig. 1), the method comprising the steps of:

"identifying a build area having development software in a hierarchically structured development directory" (see Custodio, [0024] for development environment as build area);

"scanning said build area and storing modified software for creating a generic software product" (see Custodio, [0029] for tracking changes to software in environments);

"said scanning defines information regarding software stored in said build area" (see Custodio, [0036] and [0045]);

"said scanning of said build area generates an inventory file that categorizes software that comprises said build area" (see Custodio, [0045] wherein database is interpreted as inventory file);

"generating an inventory file from build information derived from scanning modified software in the build area" (see Custodio, [0029] and [0045] for tracking the modified software in environment and storing information in database);

"operating said inventory file for receiving and storing information in said build area" (Custodio, [0036]-[0037] for using database to store information from inventory software/manager);

"comparing the build information in the inventory file element with information regarding a current generic release of software in a release area" (see Custodio, [0033] for comparing information regarding two releases);

"said inventory file compares all software comprising said build area with information regarding a current release of the software in a release area" (see Custodio, [0033], [0042] and

[0045] for using information in the database to determine the difference between software (i.e.,

release) in different environment) wherein inventory manager can be interpreted as software

release information manager);

"said comparison defines: files in current release but not in new build area; deleted file

names not in new build area and not in a current release; new file names in new build area and

not in current release; differences in parameters of both newly deleted files and newly added

files, file differences, file user permission" (see Custodio, [0089]-[0092]);

"installing modified software into the release area to create the entirety of a new release

of software in the release area defining a release database" (see Custodio, [0029] for deploying

code to an environment to define a new release); and

"reporting to a user the differences between the release information and the build

information wherein the differences include one or more of: file existence, file names, file

ownership information, file access control information, file contents directory existence,

directory names, directory ownership information, and directory access control information" (see

Custodio,] [0043], [0084] and [0089]-[0090]).

Claim Rejections - 35 USC § 103

14.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
manner in which the invention was made.

15.   Claim 9 (effective filing date 03/26/2004) is rejected under 35 U.S.C. 103(a) as being

unpatentable over Custodio (US Publication No 2003/0182652, effective filing date 12/21/2001)

as applied to claim 8 above, and further in view of Spinrad et al. (US Publication No

2004/0176930, effective filing date 03/03/2003).

        As to claim 9, this claim is rejected based on arguments given above for rejected claim 8

and is similarly rejected including the following:

        Custodio teaches:

        "storing the received build information in a first database" (see Custodio, [0036] and

[0045] for storing inventory information of environment in a database);

        However, Custodio does not teach:

        "storing the received release information defining entirety of a new software release in a

second database of said release database"; and

        wherein the step of reporting further comprises accessing the first and second database to

compare the build information stored therein and the release information stored therein to

identify differences therebetween".

        On the other hand, Spinrad et al. teaches:

        "storing the received release information defining entirety of a new software release in a

second database of said release database" (see Spinrad et al., Abstract and [0019]-[0020]); and

wherein the step of reporting further comprises accessing the first and second database to compare the build information stored therein and the release information stored therein to identify differences therebetween" (see Spinrad et al., Abstract and [0021]).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teachings of Spinrad et al. the Custodio's system. Skilled artisan would have been motivated to so do to provide an effective way to compare data between two software releases. In addition, both of the references (Custodio and Spinrad et al.) teach features that are directed to analogous art and they are directed to the same field of endeavor, such as, versions of software applications, method of comparing differences between two versions of software application. This close relation between both of the references highly suggests an expectation of success.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong-Thao Cao whose telephone number is (571)272-2735. The examiner can normally be reached on 8:30 AM - 5:00 PM (Mon - Fri).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hung T Vy/
Primary Examiner, Art Unit 2163

Phuong-Thao Cao, Examiner
Art Unit 2164
October 12, 2008